

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

*PBM Cases*

) MDL 2804

) Case No. 1:17-md-2804

) SPECIAL MASTER COHEN

) **DISCOVERY RULING NO. 26**  
) **REGARDING CONFIDENTIALITY**  
) **DESIGNATIONS**

This matter is before the Special Master upon the parties' request to resolve disputes regarding whether the PBMs have properly designated as confidential documents referred to in the City of Rochester's supplemental and amended complaint. The parties resolved many confidentiality disputes through the meet and confer process, but ask the undersigned to resolve their remaining disagreements. *See* discovery agenda item no. 392.

The legal standard regarding confidentiality designations is set forth in Discovery Ruling No. 20. *See* docket no. 1650 at 3. In sum, it is insufficient for a party to simply deem its information sensitive. Rather, the party must demonstrate the information qualifies as "confidential business information." Accordingly, the designating party bears the burden of showing good cause that the information should be protected under Fed. R. Civ. P. 26, and good cause is shown by articulating specific facts exhibiting there would be a clearly defined and serious injury if confidentiality is breached. The designating party may not rely merely on conclusory statements.

To reach the rulings set forth below, the undersigned considered several factors, including:  
(1) whether the information in the document is stale; (2) whether, and the extent to which, the

information was disclosed to other parties, or was otherwise publicly available; and (3) the reasonable possibility for actual, rather than hypothetical, competitive harm.

The undersigned observes that: (a) many of the documents are likely stale; and (b) often, rather than articulating a clearly defined and serious injury, the PBMs offered conclusory, boilerplate recitations that the documents contained “proprietary and sensitive business information that is closely guarded and not publicly disclosed,” and “disclosure of [the information] would result in competitive harm.” Despite these two general weaknesses in the PBMs’ arguments, the undersigned tended to be lenient and erred on the side of protecting the confidentiality of the documents. *Cf. Shane Group, Inc. V. Blue Cross Blue Shield of Michigan*, 825 f.3d 299, 305 (6th Cir. 2016) (distinguishing the standards for placing a document on the public record versus producing documents in discovery, concluding: “secrecy is fine at the discovery stage, before the material enters the judicial record”).

Having reviewed the documents and associated materials, the Special Master rules as follows:

Producing Party	Row	Document Bates #	SM Ruling
Endo	6	ENDO-OPIOID_MDL-02084872	Objection overruled. Not confidential.
Express Scripts	7	ESI_JEFFCOMO_000029940	Objection overruled. Not confidential.
Express Scripts	8	ESI_JEFFCOMO_000032900	Objection overruled. Not confidential.
Express Scripts	12	ESI_JEFFCOMO_000109001	Objection sustained.
Express Scripts	15	ESI_JEFFCOMO_000138614	Objection withdrawn by ESI.
Express Scripts	16	ESI_JEFFCOMO_000146976	Objection overruled. Not confidential.
Express Scripts	18	ESI_JEFFCOMO_000178613	Objection overruled. Not confidential.
Express Scripts	19	ESI_JEFFCOMO_000179506	Objection overruled. Not confidential.
Express Scripts	21	ESI_JEFFCOMO_000225387 & ESI_JEFFCOMO_000225388	Objection sustained.
Express Scripts	22	ESI_JEFFCOMO_000227510	Objection sustained.

Producing Party	Row	Document Bates #	SM Ruling
Express Scripts	25	ESI_JEFFCOMO_000259907	Objection overruled. Not confidential.
Express Scripts	26	ESI_JEFFCOMO_000260226	Objection overruled. Not confidential.
Express Scripts	29	ESI_JEFFCOMO_000265250	Objection overruled. Not confidential.
Express Scripts	31	ESI_JEFFCOMO_000273100	Objection sustained.
Express Scripts	35	ESI_MDL_001069728	Objection sustained.
Express Scripts	38	ESI_JEFFCOMO_000299137	Objection sustained.
Janssen	3	JAN-MS-01469882	Objection overruled. Not confidential.
Janssen	4	JAN-MS-01487978	Objection sustained.
Janssen	5	JAN-MS-01503622	Objection sustained.
OptumRx	4	OPTUMRX_JEFFCO_0000444499	Objection sustained.
OptumRx	5	OPTUMRX_JEFFCO_0000280447	Objection sustained.
OptumRx	6	OPTUMRX_JEFFCO_0000443821	Objection sustained.
OptumRx	7	OPTUMRX_JEFFCO_0000616539	Objection sustained.
OptumRx	9	OPTUMRX_JEFFCO_0000184280	Objection sustained.
OptumRx	12	OPTUMRX_JEFFCO_0000661986	Objection sustained.
OptumRx	13	OPTUMRX_JEFFCO_0594849	Objection overruled. Not confidential.
OptumRx	16	OPTUMRX_JEFFCO_0000140266	Objection sustained.
OptumRx	18	OPTUMRX_JEFFCO_0000041763	Objection sustained.
OptumRx	19	OPTUMRX_JEFFCO_0000390555	Objection sustained.
OptumRx	26	OPTUMRX_JEFFCO_0000184961	Objection sustained.
OptumRx	29	OPTUMRX_JEFFCO_0000366595	Objection overruled. Not confidential.
OptumRx	32	OPTUMRX_JEFFCO_0000017988	Objection overruled. Not confidential.
OptumRx	38	OPTUMRX_JEFFCO_00006830936	Objection overruled. Not confidential.
OptumRx	43	OPTUMRX_JEFFCO_0000407867	Objection sustained.
OptumRx	44	OPTUMRX_JEFFCO_0590661	Objection sustained.
OptumRx	45	OPTUMRX_JEFFCO_0000314905	Objection sustained.
OptumRx	50	OPTUMRX_JEFFCO_0000236339	Objection sustained.
OptumRx	51	OPTUMRX_JEFFCO_0000604618	Objection overruled. Not confidential.
OptumRx	53	OPTUMRX_JEFFCO_0000366858	Objection sustained.
OptumRx	54	OPTUMRX_JEFFCO_0000385779	Objection sustained.
OptumRx	69	OPTUMRX_JEFFCO_0000446761	Objection overruled. Not confidential.
OptumRx	70	OPTUMRX_JEFFCO_0000206377	Objection sustained.
OptumRx	72	OPTUMRX_JEFFCO_0000089527	Objection overruled. Not confidential.

Producing Party	Row	Document Bates #	SM Ruling
Purdue	28	PPLP003790152	Objection sustained.
Purdue	29	PPLP004148287	Objection sustained.
Purdue	30	PPLP004148372	Objection overruled. Not confidential.
Purdue	44	PPLPC012000341683	Objection sustained.
Purdue	45	PPLPC012000355642	Objection sustained.
Purdue	50	PPLPC018000065660	Objection sustained.
Purdue	51	PPLPC018000592593	Objection sustained.
Purdue	52	PPLPC018000689541	Objection sustained.
Purdue	53	PPLPC018000697326	Objection sustained.
Purdue	54	PPLPC018000742542	Objection overruled. Not confidential.
Purdue	55	PPLPC018000829180	Objection sustained.
Purdue	59	PPLPC019000665974	Objection overruled. Not confidential.
Purdue	60	PPLPC019000666914	Objection overruled. Not confidential.
Purdue	74	PPLPC020000610710	Objection overruled. Not confidential.
Purdue	75	PPLPC020000804293	Objection sustained.
Purdue	123	PPLPC030000269252	Objection overruled. Not confidential.
Purdue	126	PPLPC030000973442	Objection sustained.
Purdue	128	PPLPC035000032658	Objection overruled. Not confidential.
Purdue	131	PPLPC036000005058	Objection sustained.
Purdue	132	PPLPC036000014773	Objection overruled. Not confidential.

The Special Master adds two observations. First, regarding any documents the Special Master has ruled are not confidential, the parties should still ensure that any personally identifiable information within those documents is redacted. Second, the Special Master is aware that the New York Times Company has requested City of Rochester to provide it with access to all of the above-listed documents, pursuant to the New York Freedom of Information Law (“FOIL”). The Special Master’s analysis did not include examination of the standards that might apply if the Court is required to adjudicate a formal request pursuant to FOIL or FOIA.

Any party choosing to object to any aspect of this Ruling must do so on or before November 20, 2024.

**Respectfully submitted,**

/s/ David R. Cohen

**David R. Cohen**  
**Special Master**

**Dated: November 6, 2024**